

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-216747**DATE:** October 22, 1984**MATTER OF:** Weldtest, Inc.**DIGEST:**

1. GAO does not review protests concerning affirmative determinations of responsibility unless there is a showing of possible fraud or bad faith on the part of contracting officials or an allegation that definitive responsibility criteria have been misapplied.
2. Absent a finding of nonresponsibility, no basis exists to withhold contract award merely because the low offeror may have submitted a below-cost proposal where the contract award is not on a cost reimbursement basis.

Weldtest, Inc. (Weldtest), protests the award of a contract to Constructora Sentos e Matos, Lda. (CSM), under request for proposals (RFP) No. F61040-84-R0027, issued by the Base Contracting Division, 1605 Military Airlift Support Wing, Lajes Field, Terceira, Azores, Portugal, for the replacement of water storage tanks. Weldtest argues that the awardee's price is unrealistically low (i.e., below cost) and that the CSM does not have the facilities and the experience necessary to perform the contract work.

We dismiss the protest.

All of Weldtest's allegations relate to CSM's ability to perform, i.e., the allegations concern matters of responsibility. Before award, a contracting officer must make an affirmative determination of the proposed awardee's responsibility. Our Office does not review protests concerning such determinations unless there is a showing of possible fraud or bad faith on the part of contracting officials or an allegation that definitive responsibility criteria have been misapplied. TECOM Incorporated, B-215291, June 19, 1984, 84-1 C.P.D. ¶ 644. Neither exception is applicable here.

Where, as here, the contract is awarded not on a cost reimbursement basis, but rather on a firm, fixed-price basis, in the absence of a nonresponsibility determination, no basis exists to withhold contract award merely because

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the low offeror may have submitted a below-cost proposal.
Everhart Appraisal Service, Inc., B-213369, May 1, 1984,
84-1 C.P.D. ¶ 485.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel